

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

VINCENT PUCCIARELLI, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

IDEAVILLAGE PRODUCTS CORP., d/b/a Copper
Fit,

Defendant.

Civil Action No.: _____

COMPLAINT

Plaintiff Vincent Pucciarelli, on behalf of himself and all others similarly situated (“Plaintiff”), by and through his undersigned counsel, Denlea & Carton LLP, states for his Complaint against defendant Ideavillage Products Corp. d/b/a Copper Fit (“Defendant,” or “Copper Fit”), as follows:

NATURE OF THE ACTION

1. This action seeks to redress the false marketing claims with which Defendant has saturated its advertising for a popular line of compression garments, namely its Copper Fit ICE Compression Knee Sleeve, Copper Fit ICE Plantar Fascia Ankle Sleeve, Copper Fit ICE Compression Gloves, Copper Fit ICE Compression Elbow Sleeve, Copper Fit ICE Compression Socks and the Copper Fit ICE Compression Back Support (the “Copper Fit ICE Products”). Specifically, Defendant is making false claims that (a) CoQ10 infused into the fabric of the products is motion activated and then released and absorbed into the human body when using the product, and (b) the purportedly absorbed CoQ10 provides health benefits, including increased energy.

2. Because Defendants' products cannot deliver the alleged benefits of CoQ10 (which are themselves dubious) Plaintiff seeks to put an end to Defendant's unfair, false, and deceptive marketing and sales of its Copper Fit ICE Products and to obtain the financial redress to which Plaintiff and his fellow class members are entitled.

THE PARTIES

3. Plaintiff Vincent Pucciarelli is an individual who resides in Richmond County (Staten Island), New York.

4. Defendant Ideavillage Products Corp. is a New Jersey corporation with its principal address at 155 Route 46 West, Wayne, New Jersey 07470.

5. Defendant develops, manufactures, markets, and sells various consumer products, including the Copper Fit® branded products described here, to consumers throughout the United States, including in New York.

6. Defendant promotes and sells its products, including the Copper Fit branded products, through national direct response television advertising commonly called "As Seen on TV" and an active social media presence (*i.e.*, Facebook, Instagram, Twitter, etc.). Defendant also promotes and sells its products (a) through well-known and leading mass retailers in the United States, including, but not limited to, Target, Walmart, CVS, Rite Aid, CVS, Walgreens, Dick's Sporting Goods, and more, (b) online through the web sites of the foregoing retailers and major online retailers such as Amazon (via, for example, Defendant's Amazon "storefront" at <https://www.amazon.com/stores/CopperFit/CopperFit/page/47D95967-D6AB-4880-84F3-CA7A278B80A1>), and (c) online through its own Copper Fit branded web sites, including <https://www.copperfitusa.com>, <https://www.getcopperfit.com/>, <https://www.copperfitback.com/> and <https://copperfitice.com/>.

7. Defendant has achieved significant success selling its Copper Fit branded products (copper-infused compression garments such as knee sleeves, elbow sleeves, back belts or braces, socks, and gloves) since their introduction in 2014, by using substantial marketing campaigns led by its brand ambassadors, NFL Hall of Fame and Super Bowl champions Brett Favre and Jerry Rice and, recently, Academy Award-Winning actress, Gwyneth Paltrow.

8. Defendant's advertising and promotion is so ubiquitous that Copper Fit has become a well-recognized brand for compression and support garments.

9. Defendant touts itself as a health and wellness company that purportedly uses innovative technologies to enhance the health and wellness of the customers who buy and use its products.

10. The copperfitusa.com web site links to an "About Us" landing page and describes the Copper Fit story this way: "Copper Fit® knows what it's like when you are unable to perform at your best. We know the cycle of soreness, pain, and longer recovery periods. We believe there is a better way. We are motivated by the idea of living in a world with less pain and increased mobility; encouraged by new technologies, materials, and fabrics designed to improve performance, support joints and muscles, aid in recovery ...". On the same page Copper Fit emphasizes "Our Mission" in stating: "Millions of people, from extreme athletes to everyday people, have already benefited from Copper Fit® products. We always keep them and our mission in mind: to empower people to stay active, feel better and enjoy life, every day.¹

11. On December 20, 2021, Copper Fit announced in a Press Release its partnership with Gwyneth Paltrow, actress, Goop Founder and self-proclaimed health and wellness guru and influencer. In that Press Release, Defendant stated: "As a leader in wellness and recovery-

¹ See <https://www.copperfitusa.com/pages/about-us> last viewed on April 28, 2022.

focused products improving the lives of all, Copper Fit's partnership with Gwyneth Paltrow will include a collection of signature elbow and knee sleeves, compression gloves and socks, and many more key products made in Paltrow's favorite feminine colors, Serenity Blue and Powder Pink."

12. In the same December 20, 2021 Press Release, Defendant added in a section entitled "About Copper Fit" that "Copper Fit is about seeking revolutionary, copper-infused technologies that support active, healthy lifestyles. The company mantra is to bring health and wellness to the forefront of your everyday through a wide range of products designed to provide peace, comfort, and performance at any age. Copper Fit's innovative technologies are meant to empower and enhance your body to a heightened wellbeing and provide purpose-driven, copper-infused products that work naturally with your body."

JURISDICTION AND VENUE

13. This Court has subject matter jurisdiction over this action pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because (1) the amount in controversy exceeds the sum or value of \$5,000,000.00, exclusive of interest and costs, and (2) the named Plaintiff and Defendant are citizens of different states. 28 U.S.C. § 1332(d)(2)(A).

14. The Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a), as the parties are diverse and the amount in controversy exceeds the requisite threshold.

15. This Court may exercise jurisdiction over Defendant because Defendant has sufficient minimum contacts in New York and purposely avails itself of the markets within New York through the promotion, sale, marketing, and distribution of its products, thus rendering jurisdiction by this Court proper and necessary

16. Venue is proper in this Court pursuant to 28 U.S.C. § 1331(b)(2) because a substantial part of the events giving rise to the claim occurred within this judicial district and because Defendant has marketed and sold the products at issue in this action within this judicial district and has done business within this judicial district.

CHOICE OF LAW

17. New York law governs the state law claims asserted herein by Plaintiff and the New York class he seeks to represent.

18. New York has a substantial interest in protecting the rights and interests of New York residents against wrongdoing by companies that market and distribute their products within the State of New York.

FACTUAL BACKGROUND

I. Defendant's Prior False Claims That The Copper In Its Copper-Infused Copper Fit Products Provided Therapeutic, Health and Performance Benefits.

19. Through an extensive and nationwide marketing campaign, Defendant marketed its Copper Fit branded compression clothing products, including the "Copper Fit Elbow Sleeve," "Copper Fit Knee Sleeve" and "Copper Fit Back Pro," as "advanced cutting-edge compression garments designed to help relieve muscle and joint soreness." Defendant claimed that its elbow and knee sleeves "provide support for muscle stiffness," "reduce recovery time of muscles," "support increased oxygenation of working muscles," and "help prevent strain and fatigue," in addition to other representations. Defendant also claimed that its Copper Fit Back Pro product provided, among other benefits, "lower back support for greater mobility and comfort," "everyday support and relief for lower back muscles," and "maximum comfort and support for lower back muscles."

20. Defendant also claimed that “the Copper Fit high-performance compression fabric is blended with therapeutic copper, essential to your body; two technologies combined to help provide support for muscle soreness and aid in recovery and performance,” thereby implying that copper infused in the Copper Fit products was absorbed into the human body to provide “essential” and “therapeutic” benefits to consumers.

21. Defendant’s representations regarding the health and therapeutic benefits of its copper-infused Copper Fit products were false because the copper infused in the products was not absorbed into the human body from wearing and using the products. Plus, even if any infused copper was absorbed into the human body it did not provide any therapeutic, health or performance benefits.

22. Defendant was not alone in cheating consumers with false representations regarding the purported therapeutic, health and performance benefits of its copper-infused compression garments.

23. On November 25, 2015, the Federal Trade Commission (the “FTC”) filed a complaint against Tommie Copper, Inc. (“TCI”), a competitor of Defendant, and its owner, Thomas Kallish, claiming that they falsely and deceptively advertised that their copper-infused compression clothing provided pain relief benefits to consumers or relieved chronic or severe pain or inflammation caused by diseases, including multiple sclerosis, arthritis and fibromyalgia, and that such false and deceptive conduct caused substantial injury to consumers and unjustly enriched TCI and Kallish (the “Tommie Copper FTC Action”).²

24. The FTC settled the Tommie Copper FTC Action with a stipulated federal court order (a) imposing an \$86.8 million judgment against the defendants, and upon defendants

² See *Federal Trade Commission vs. Tommie Copper, Inc. et, al.*, Case No. 7:15-cv-09304-VB, Dkt. No. 3.

payment of \$1.35 million, suspending the balance of the judgment amount subject to compliance with certain other conditions, (b) enjoining the defendants from continuing to make misrepresentations regarding the pain or inflammation reducing benefits of copper-infused products, and (c) requiring TCI and Thomas Kallish to have competent and reliable scientific evidence before making future claims about pain relief, disease treatment, or health benefits.³

25. Consumers also filed class action lawsuits against TCI based on its false claims that its copper-infused compression clothing relieved pain and provided other health benefits. TCI settled those claims on a class basis for \$750,000.⁴

26. Defendant also faced consumer class actions similar to those filed against TCI. For example, on August 13, 2015, three California residents filed a proposed class action against Copper Fit in the U.S. District Court for the Central District of California alleging that Copper Fit falsely and deceptively promoted its copper-infused compression products, including the “Copper Fit Elbow Sleeve, Copper Fit Knee Sleeve: and “Copper Fit Back Pro,” as providing therapeutic and health benefits, including purportedly relieving pain, relieving muscle and joint stiffness and soreness, preventing strain and fatigue, reducing swelling, and improving recovery time.⁵ Similarly, on May 15, 2015, a resident of Iowa commenced a proposed class action against Copper Fit in the U.S. District Court for the District of New Jersey asserting similar

³ See *Federal Trade Commission vs. Tommie Copper, Inc.* et, al., Case No. 7:15-cv-09304-VB, Dkt. No. 5). See also <https://www.ftc.gov/news-events/press-releases/2015/12/tommie-copper-pay-135-million-settle-ftc-deceptive-advertising> (FTC press release regarding the settlement order and judgment).

⁴ See <https://topclassactions.com/lawsuit-settlements/closed-settlements/tommie-copper-athletic-clothing-class-action-settlement/>. See generally *In re: Tommie Copper Products Consumer Litigation*, Case No. 7:15-cv-03183-AT, in the U.S. District Court for the Southern District of New York.

⁵ See *Debra Murphy et al v. IdeaVillage Products Corp.*, 5:15-cv-01638-AB-DTB, Dkt. No. 1.

claims.⁶ A copy of the complaint filed in the California proposed class action is attached as **Exhibit A hereto** as an example for this court.

27. Although the claims in the earlier California and New Jersey actions had merit, on August 7, 2015, and before the certification of any class, the plaintiff filed a notice of dismissal of the New Jersey action against Copper Fit,⁷ and on December 2, 2016, and before the certification of any class, the parties stipulated to the dismissal of the California action against Copper Fit.⁸

28. Since resolving the class action litigation it faced in 2015 and 2016, Copper Fit scaled back its bogus claims of therapeutic and health benefits stemming from the copper in its copper-infused compression clothing. However, Copper Fit remained unchastened, and turned to new ways to deceive consumers for financial gain.

II. Defendant's False and Misleading Claims That CoQ10 In Its CoQ10-Infused Copper Fit ICE® Products Is Absorbed Into the Human Body and Provides Health Benefits, Including Increased Energy.

29. Coenzyme Q10, commonly called CoQ10, is an anti-oxidant that the human body naturally produces. Human cells use CoQ10 for growth and metabolism.⁹

30. The vast majority of people naturally produce sufficient CoQ10 and do not require any additional CoQ10 for their health and well-being, including energy levels. For some people CoQ10 blood levels may decrease due to age, certain conditions such as heart disease, or cholesterol lowering medications (*i.e.*, statins).¹⁰

⁶ See *Ortiz v. Ideavillage Products Corp.*, 2:15-cv-03365-ES-JAD, Dkt. No. 1.

⁷ See *Ortiz v. Ideavillage Products Corp.*, 2:15-cv-03365-ES-JAD, Dkt. No. 17.

⁸ See *Debra Murphy et al v. IdeaVillage Products Corp.*, 5:15-cv-01638-AB-DTB, Dkt. No. 27.

⁹ See <https://www.mayoclinic.org/drugs-supplements-coenzyme-q10/art-20362602>.

¹⁰ *Id.*

31. “CoQ10 dietary supplements are available as capsules, chewable tablets, liquid syrups, wafers and by IV.” Such dietary supplements “might help prevent or treat certain heart conditions, as well as migraine headaches.” According to the Mayo Clinic, “[b]ecause CoQ10 is involved in energy production, it's believed that this supplement might improve your physical performance. However, research in this area has produced mixed results.”¹¹

32. The Mayo Clinic recommends that people only take CoQ10 supplements “under your doctor's supervision.”¹²

33. CoQ10 are one of the most popular dietary supplements in the United States,¹³ and the CoQ10 dietary supplements industry has engaged in a massive promotion of untold, but questionable, purported CoQ10 health benefits.

34. The CoQ10 dietary supplement industry has generated its own controversy. To realize any benefits of CoQ10 supplementation at a cellular level, an individual must achieve

¹¹ *Id.* The web site of the Oregon State University Linus Pauling Institute Micronutrient Information Center (<https://lpi.oregonstate.edu/mic/dietary-factors/coenzyme-Q10#athletic-performance>) states that “[t]here is little evidence that supplementation with coenzyme Q₁₀ improves athletic performance in healthy individuals. A few placebo-controlled trials have examined the effects of 100 to 150 mg/day of supplemental coenzyme Q₁₀ for three to eight weeks on physical performance in trained and untrained men. Most did not find significant differences between the group taking coenzyme Q₁₀ and the group taking placebo with respect to measures of aerobic exercise performance, such as maximal oxygen consumption (VO₂ max) and exercise time to exhaustion (86-90). One study found the maximal cycling workload to be slightly (4%) increased after eight weeks of coenzyme Q₁₀ supplementation compared to placebo, although measures of aerobic power were not increased (91). Two studies actually found significantly greater improvement in measures of anaerobic (87) and aerobic (86) exercise performance with a placebo than with supplemental coenzyme Q₁₀. More recent studies have suggested that coenzyme Q₁₀ could help reduce both muscle damage-associated oxidative stress and low-grade inflammation induced by strenuous exercise (92-95). Studies on the effect of supplementation on physical performance in women are lacking, but there is little reason to suspect a gender difference in the response to coenzyme Q₁₀ supplementation.”

¹² *Id.*

¹³ See <https://www.consumerlab.com/news/consumers-returned-to-pre-pandemic-supplement-uses/02-24-2022>.

effective or optimum CoQ10 blood levels. In its raw form, however, CoQ10 is a crystalline powder that is insoluble in water, and poorly soluble in fat, and thus not easily absorbed even in the digestive track when taken by mouth (let alone from fabric through the skin). CoQ10 supplement manufacturers have faced their own class action lawsuits asserting that they have made false claims regarding the effectiveness of their CoQ10 supplements and the absorption rates of such supplements when ingested.¹⁴

35. In order to take advantage of the CoQ10 “health” hype created by the diet supplement industry, and to deceive consumers, Defendant introduced the Copper Fit ICE Products as a brand extension line of its existing Copper Fit branded products.¹⁵

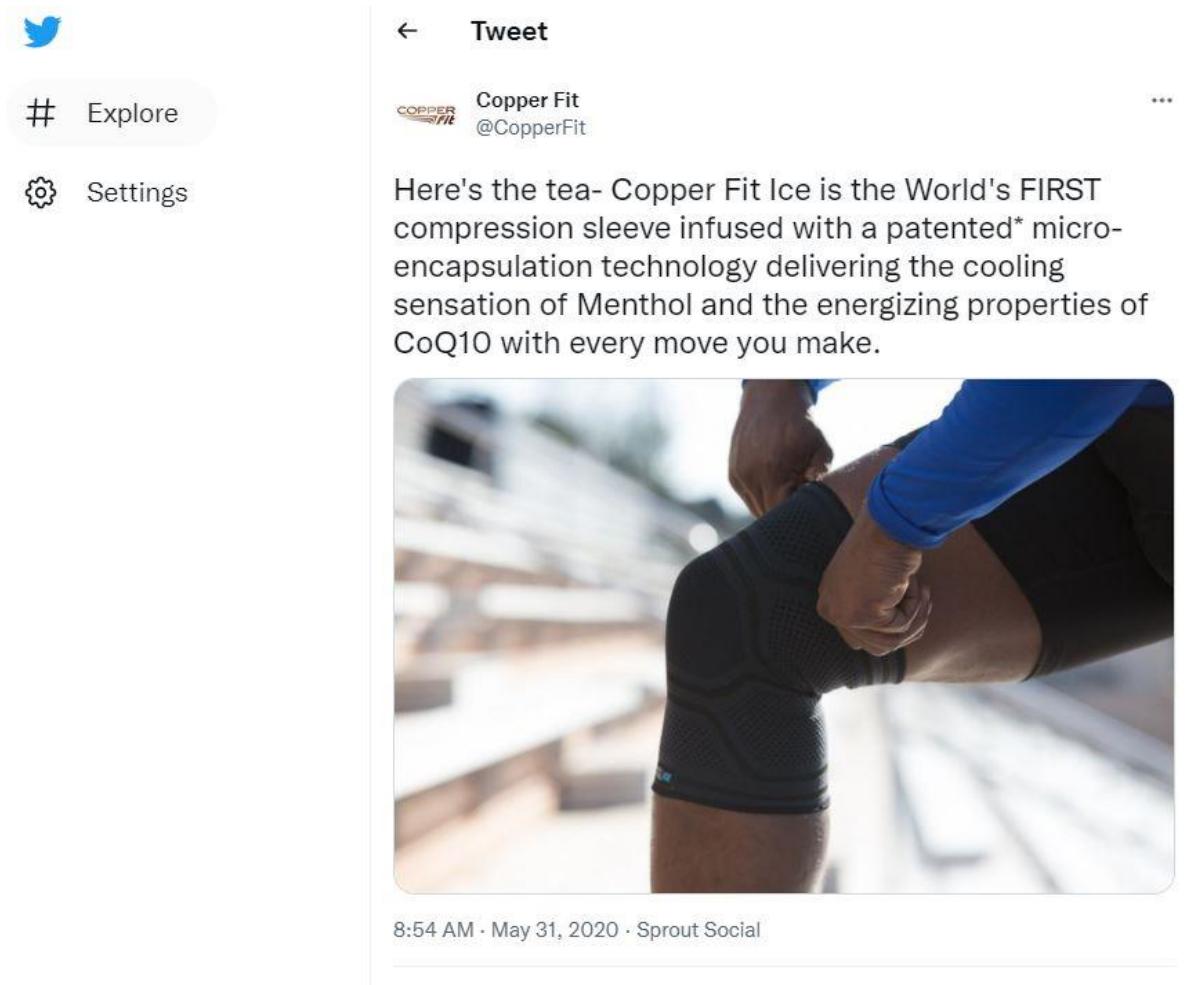
36. Defendant, via its web sites, product packaging, social media, online retail outlets, and other advertising and promotion, prominently markets and sells its Copper Fit ICE Products as being infused with CoQ10 through “micro-encapsulation technology,” and falsely claims that the infused CoQ10 is motion activated and then released and absorbed into the human body when using the product, and that the purportedly absorbed CoQ10 provides health benefits, including increased energy.

37. On May 31, 2020, Copper Fit posted to its Twitter account a description of its new Copper Fit ICE compression garments: “Here's the tea - Copper Fit Ice is the World's FIRST compression sleeve infused with a patented* micro-encapsulation technology delivering the cooling sensation of Menthol and the energizing properties of CoQ10 with every move you make.” That tweet is shown here:¹⁶

¹⁴ See, e.g., <https://www.prnewswire.com/news-releases/coq-10-class-action-settlement-300686138.html> (Walmart settles CoQ10 supplement class action for \$1.3 million).

¹⁵ See, e.g., <https://www.copperfitusa.com/collections/ice..>

¹⁶ See <https://twitter.com/CopperFit/status/1267076868815171585?ext=HHwWgsC9zd3sx5UjAAAA>



← Tweet

COPPER Fit Copper Fit
@CopperFit

Here's the tea- Copper Fit Ice is the World's FIRST compression sleeve infused with a patented* micro-encapsulation technology delivering the cooling sensation of Menthol and the energizing properties of CoQ10 with every move you make.



8:54 AM · May 31, 2020 · Sprout Social

38. Copper Fit's copperfitusa.com web site touts the benefits of the entire line of Copper Fit ICE products: "Our ICE Collection is especially designed to release a cooling sensation and provide all day support right where you need it most. The exclusive circular knit and anti-chafing compression fabric is infused with the cooling sensation of menthol and energizing properties of CoQ10. ICE helps relieve muscle and joint aches, improves circulation, reduces swelling, and speeds up recovery time. The more you move, the more ICE works for you!" (Emphasis added)¹⁷

last viewed April 28, 2022.

¹⁷ See <https://www.copperfitusa.com/collections/ice> last viewed April 28, 2022.

39. The Copper Fit ICE web site at <https://copperfitice.com/> describes the Copper Fit ICE knee sleeve at the top of the landing page as “Our Strongest Compression Sleeve Infused with Micro-Encapsulated Menthol & CoQ10!” and then states under “Features & Benefits” that it is the “World’s FIRST Copper Fit® sleeve to infuse the cooling sensation of menthol and the energizing properties of CoQ10 into the compression fabric using a patented* Micro-Encapsulation technology” and “[t]he more you move, the more ICE is released.” The top part of the landing page of this Copper Fit ICE web site is shown here:¹⁸

COPPER *Fit* ICE KNEE SLEEVES

Our Strongest Compression Sleeve Infused with Micro-Encapsulated Menthol & CoQ10!

EXCLUSIVE WEB OFFER

Now Only **\$19.99**

FREE SHIPPING!

Order Now

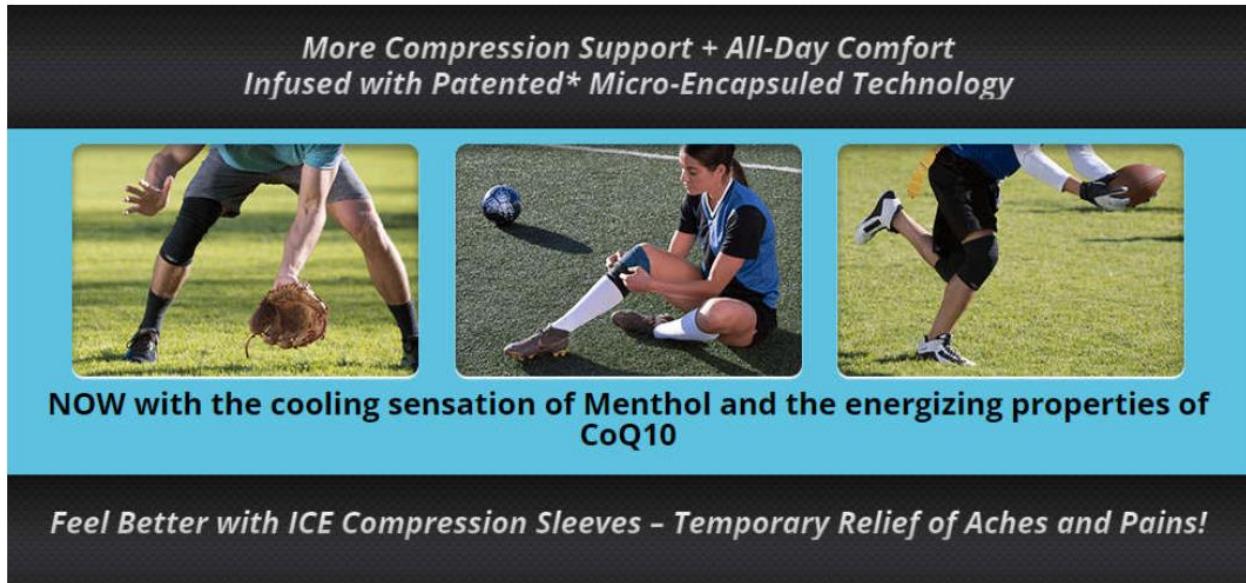
MONEY BACK GUARANTEE!

30 DAY

FEATURERS & BENEFITS

- NEW anti-chaffing, all-day comfort, circular knit compression helps provide more support than any other Copper Fit® sleeve
- Compression helps temporarily relieve muscle and joint aches and pains, improve circulation, and reduce swelling and recovery time
- World's FIRST Copper Fit® sleeve to infuse the cooling sensation of menthol and the energizing properties of CoQ10 into the compression fabric using a patented* Micro-Encapsulation technology
- The more you move, the more ICE is released

¹⁸ <https://copperfitice.com/> last viewed on April 28, 2022.



Introducing Copper Fit® ICE, the World's FIRST compression sleeve infused with a patented* micro-encapsulation technology delivering the cooling sensation of Menthol and the energizing properties of CoQ10 with every move you make. The more you move, the more ICE delivers!



40. Copper Fit produced a video advertisement promoting the Copper Fit ICE product line, including, specifically, the Copper Fit ICE knee sleeve, to consumers on the Defendant's web sites, YouTube, other social media, and accompanying product descriptions via Copper Fit's Amazon online "storefront." The slickly produced video highlights that the Copper Fit ICE compression garments are infused with Menthol and CoQ10, and provide the healing sensation of Menthol and the "energizing properties of CoQ10" because the Menthol and CoQ10 infused in the fabric are both supposedly released from the fabric and absorbed into the human body when "motion activated" by the consumer wearing the product.¹⁹

¹⁹ See <https://copperfitice.com/> (video on upper right) and <https://www.youtube.com/watch?v=fdJIVfJoPi0b> and https://www.amazon.com/Copper-Fit-Compression-Infused-Recovery/dp/B084TYDX6M?ref_=ast_sto_dp&th=1&psc=1, (scroll down for videos on Amazon), all last viewed on April 28, 2022. See also <https://www.ispot.tv/ad/tZJN/copper-fit-ice-knee-sleeves-motion-activated-menthol-featuring-brett-favre-jerry-rice> (video with Brett Favre and Jerry Rice promoting Copper Fit ICE knee sleeves) last viewed on April 28, 2022.

41. The voice over to the video advertisement states in the first 24 seconds: “When knee pain stops you in your tracks and you need relief to keep you moving. Introducing Copper Fit ICE, the world’s first compression sleeve to include the healing sensation of Menthol and the energizing properties of CoQ10. These micro-encapsulated ingredients are infused into the compression fabric and are released and absorbed by your movement. The more you move, the more Copper Fit Ice delivers.”²⁰

42. Those voice over statements on the video advertisement are accompanied by video of actors using the Copper Fit ICE knee sleeve, colorful graphics showing bolts of electricity enveloping the knee wearing the sleeve, and written screen graphics stating:

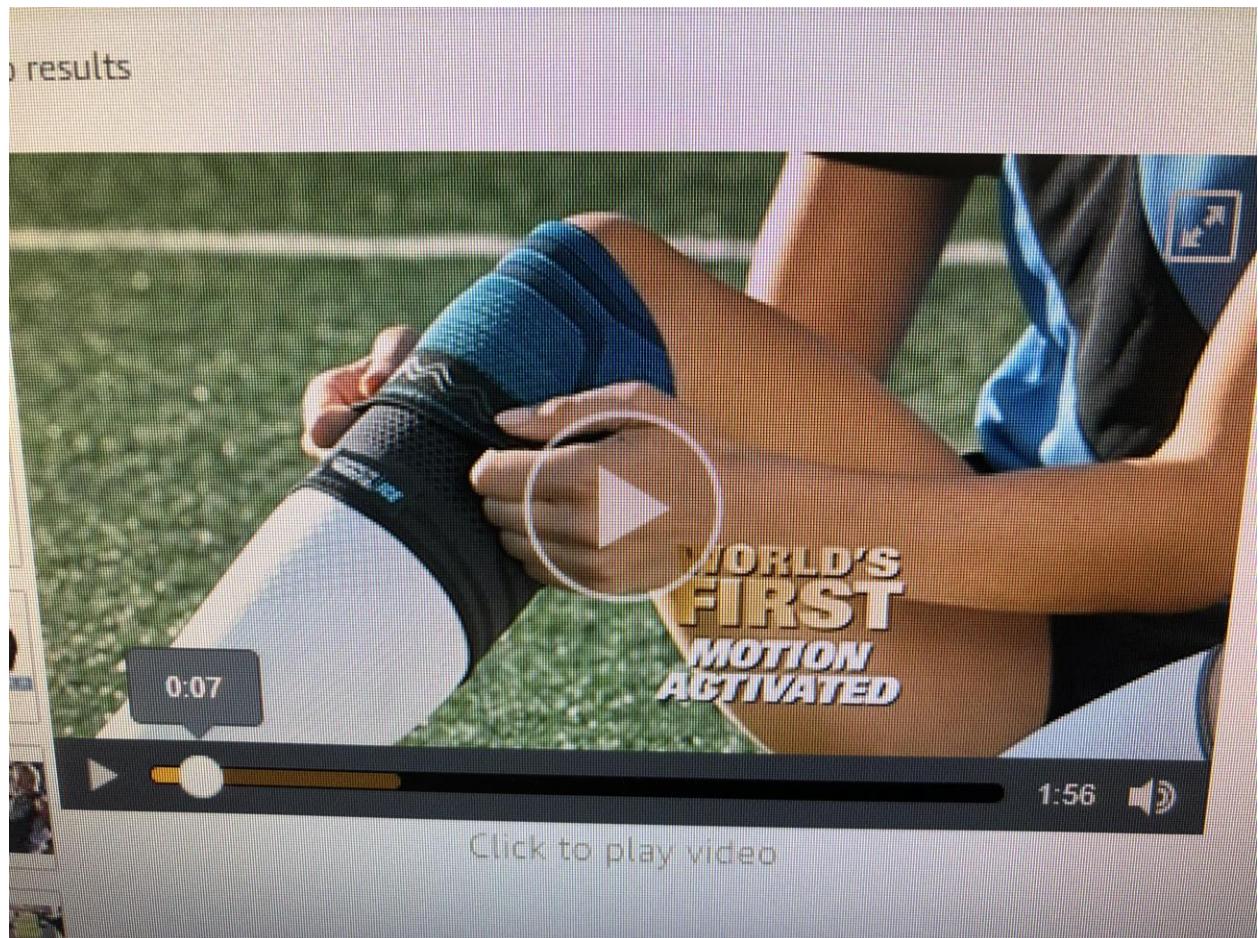
- a. “World’s First Motion Activated”
- b. “Now with Menthol and CoQ10”
- c. “Now Infused with Menthol and CoQ10”
- d. “Motion Activated”
- e. “The More you move, the more ICE Delivers”²¹

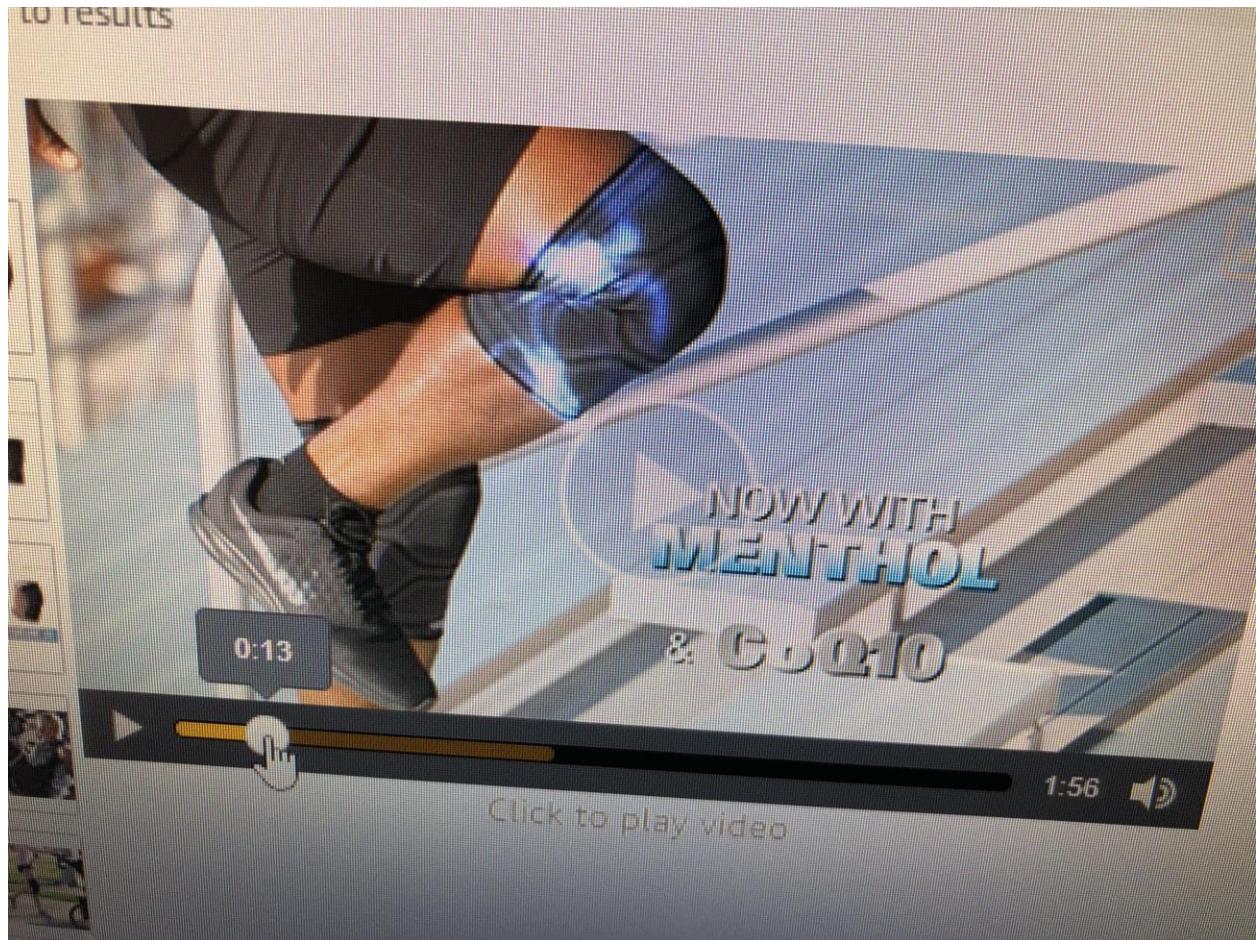
43. The following are screenshots from the video advertisement showing the emphasis on the motion activation releasing CoQ10 for absorption into the human body:²²

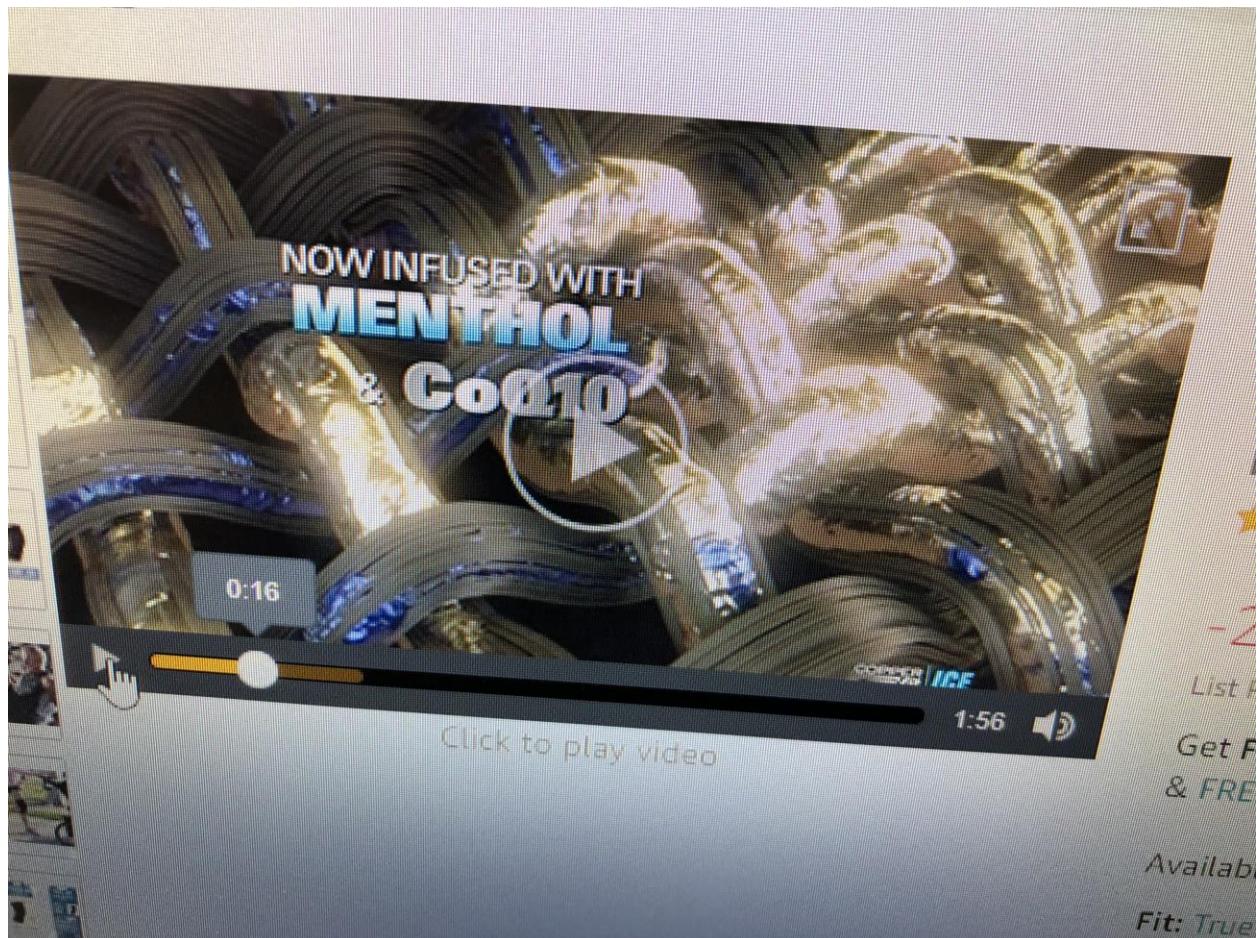
²⁰ *Id.*

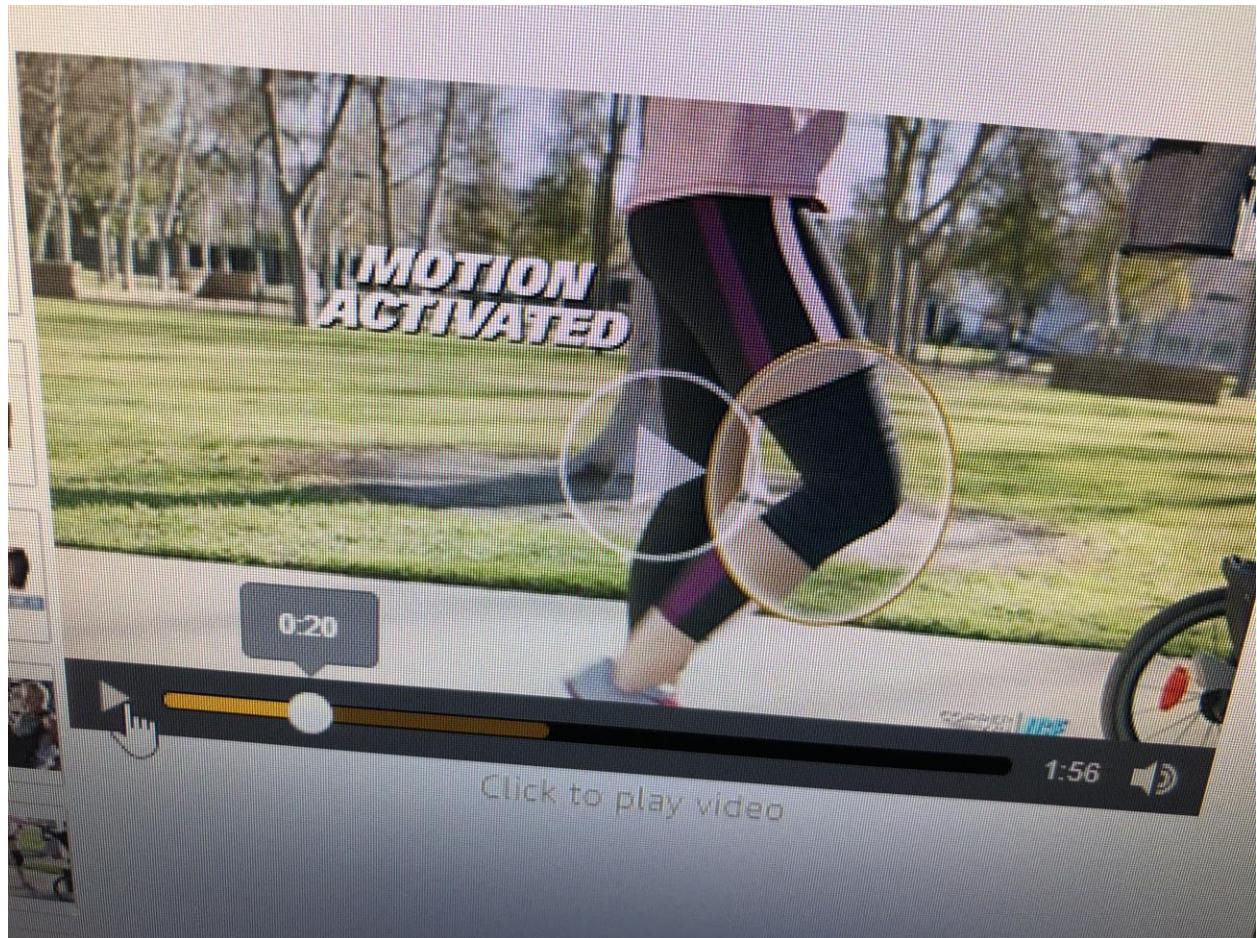
²¹ *Id.*

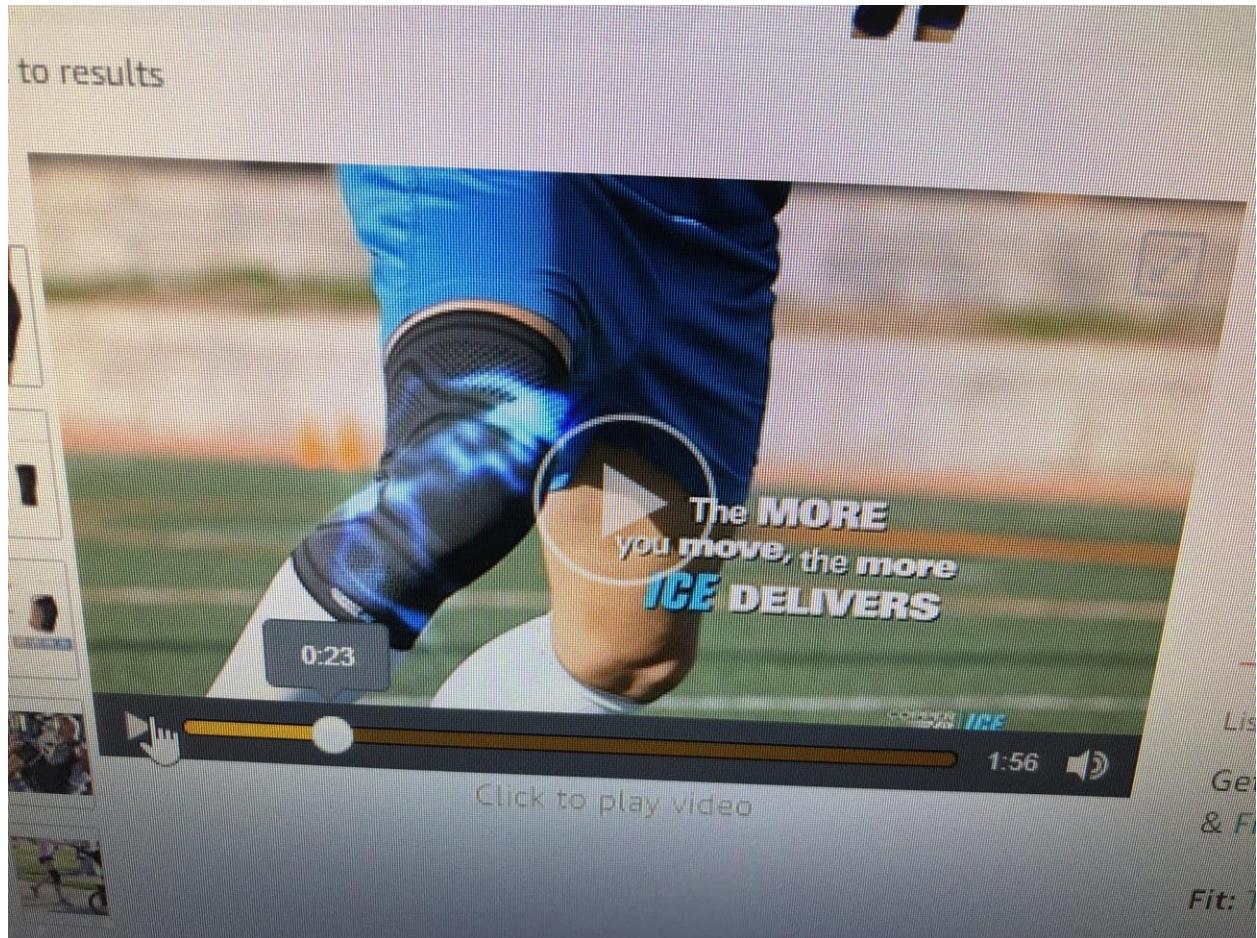
²² *Id.*









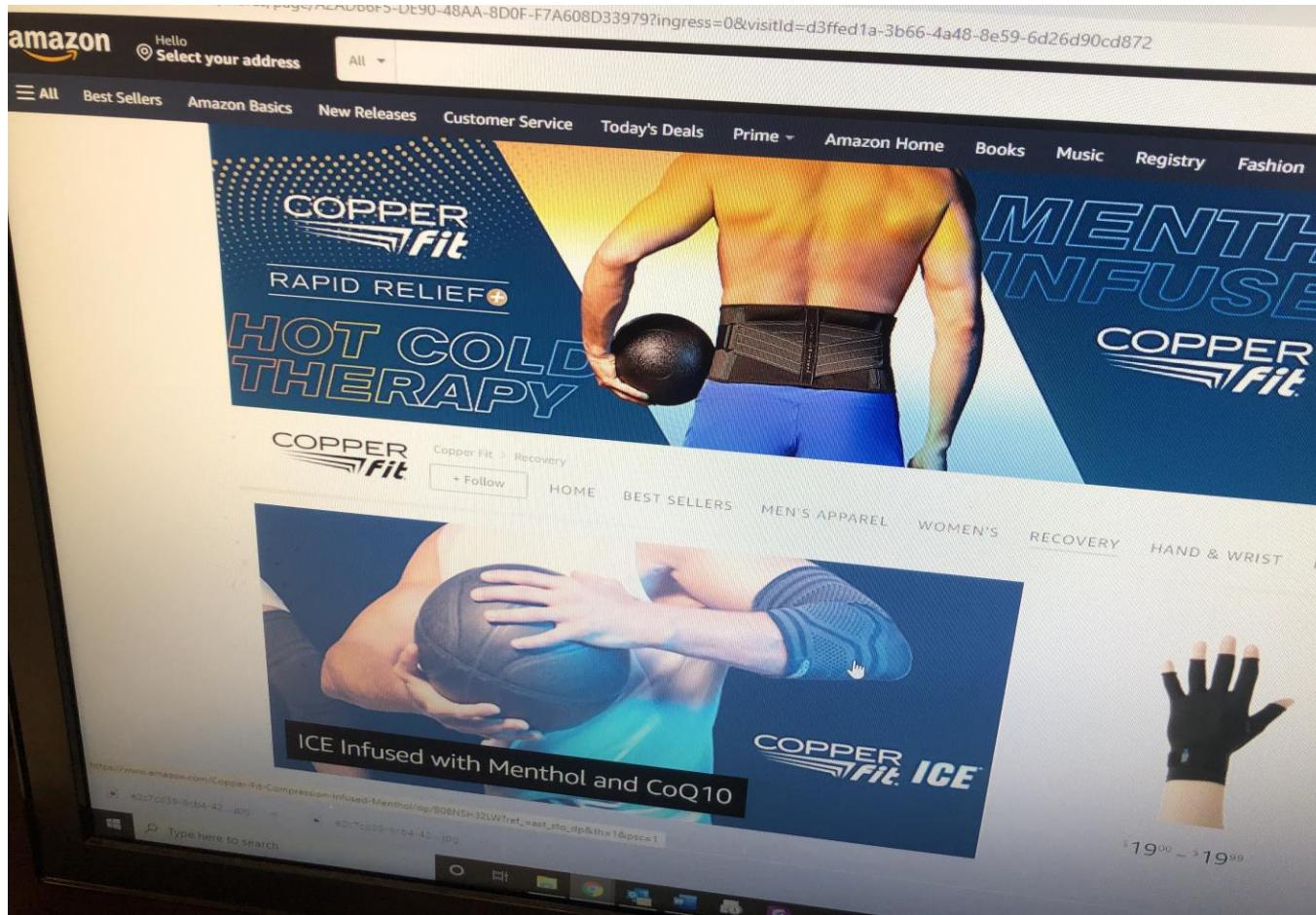


44. After presenting testimonials, the voice over to the video advertisement repeats again: “The cooling sensation of Menthol and the energizing properties of CoQ10. Activated by motion to keep you in motion.” A woman named Samantha Sage then appears in the video and says: “[t]he more I move, it feels better and better. I haven’t experienced anything like this.”²³

45. Copper Fit’s Amazon storefront site features the Copper Fit ICE product line under the subcategory of products for “RECOVERY” with an image that emphasizes that the Copper Fit ICE line of compression garments are infused with Menthol and CoQ10²⁴ as shown here:

²³ *Id.*

²⁴ <https://www.amazon.com/stores/page/A2ADB6F5-DE90-48AA-8D0F-F7A608D33979?ingress=0&visitId=d3ffed1a-3b66-4a48-8e59-6d26d90cd872> last viewed on



46. Copper Fit's Amazon storefront emphasizes these features of the Copper Fit ICE adjustable back belt infused with menthol and CoQ10 under the heading "About this Item: "Each package contains 1 compression back belt sleeve infused with copper, menthol and the energizing properties of CoQ10 for maximum relief and recovery" and "Each cooling back belt is designed to provide more support and help temporarily relieve muscle and joint aches. The more you move, the more menthol and CoQ10 is released for maximum comfort." (Emphasis added).²⁵

April 28, 2022.

²⁵ See https://www.amazon.com/Copper-Fit-Adjustable-Compression-Infused/dp/B084TXMLCR?ref_=ast_sto_dp last viewed April 28, 2022.

47. Similarly, Copper Fit's Amazon storefront emphasizes these features of the Copper Fit ICE compression gloves under the heading "About this Item: "Each package contains 1 pair of compression gloves infused with copper, menthol and the energizing properties of CoQ10 for maximum relief and recovery" and "Each glove is designed to provide more support and help temporarily relieve muscle and joint aches. The more you move, the more menthol and CoQ10 is released for maximum comfort[t]." (Emphasis added).²⁶

48. Copper Fit's Amazon storefront emphasizes the same features for the Copper Fit ICE knee sleeve and elbow sleeve, and compression socks, namely that each product "incorporates the cooling sensation of menthol and the energizing properties of CoQ10 into a patented micro-encapsulation technology" and "is infused with the soothing aroma of menthol and the energizing properties of CoQ10. The more you move, the more you release."²⁷

49. Similarly, Copper Fit's Amazon storefront describes the Copper Fit ICE compression socks this way: "Copper Fit ICE is the first line of copper-infused compression garments and the first to incorporate the healing sensation of menthol and the energizing properties of CoQ10 into a patented micro-encapsulation technology infused into ICE compression fabrics" and the socks are "infused with the soothing aroma of menthol and the energizing properties of CoQ10."²⁸

²⁶ See https://www.amazon.com/Copper-Fit-Compression-Infused-Recovery/dp/B084TY9BWF?ref=ast_sto_dp&th=1&psc=1 last viewed on April 28, 2022.

²⁷ See https://www.amazon.com/Copper-Fit-Compression-Infused-Menthol/dp/B08NSH32LW/ref=sr_1_6?crid=3PRMEP1XT592B&keywords=copperfit+ice+sleeve&qid=1647273730&sprefix=CopperFit+ICE%2Caps%2C65&sr=8-6 and https://www.amazon.com/Copper-Fit-Compression-Infused-Recovery/dp/B084TY39CM/ref=sr_1_5?crid=3PRMEP1XT592B&keywords=copperfit+ice+sleeve&qid=1647273824&sprefix=CopperFit+ICE%2Caps%2C65&sr=8-5 last viewed April 28, 2022.

²⁸ See https://www.amazon.com/Copper-Fit-Menthol-Infused-Compression/dp/B088K2PKC6?ref=ast_sto_dp&th=1&psc=1 last viewed on April 28, 2022.

50. Promotional images for the Copper Fit ICE Knee Sleeve products sold through the Dick's Sporting Goods web site ²⁹ also emphasize that the product has "Micro Encapsulated" "Menthol and CoQ10" and that those chemicals in the fabric are "Motion Activated," leading to "Relief + Recovery."

²⁹ Images from Dick's Sporting Goods web site last viewed on April 28, 2022.
<https://www.dickssportinggoods.com/p/copper-fit-ice-compression-knee-sleeve-20av5ucpprftcknxspm/20av5ucpprftcknxspm>



51. Promotional images for the Copper Fit ICE Knee Sleeve products sold through the Dick's Sporting Goods web also emphasize under "Features and Benefits" that the "CoQ10 PROMOTES ENERGY RECOVERY" as shown here:



Official Mark Of The
COPPER FIT BRAND

ICE | Menthol Infused **KNEE SLEEVE**

Features & Benefits

**MENTHOL INFUSED
COOLING SENSATION**

**CoQ10
PROMOTES ENERGY RECOVERY**

**COPPER INFUSED
HIGH PERFORMANCE KNIT**

**ADVANCED COMPRESSION
FOR MAXIMUM SUPPORT**

**SEAMLESS DESIGN
BREATHABLE KNIT**

**REINFORCED BAND
TO PREVENT SLEEVE SLIPPING**

**CONTOUR DESIGN
FOR PERFECT FIT**



52. The Copper Fit ICE product packaging repeats the same false statements as Copper Fit's advertising. The product packaging of the Copper Fit ICE compression sleeve product states on the front that the product provides "RELIEF + RECOVERY" and contains "MICRO ENCAPSULATED MENTHOL & COQ10" and states on the back that the "CoQ10" "PROMOTES ENERGY RECOVERY" and repeats the Copper Fit ICE tag line: "Motion activated, the more you move the more you gain." The packaging of each and every one of the

Copper Fit ICE products displays the same or similar statements. Exemplars of the packaging of the Copper Fit ICE Products is shown here:









53. Defendant's claim that the CoQ10 infused in its Copper Fit ICE Products is motion activated and then released and absorbed into the human body when the product is used is false and misleading with respect to each of the Copper Fit Products.

54. Defendant's additional claim that the purportedly absorbed CoQ10 provides health benefits, including increased energy, is also false and misleading with respect to each of the Copper Fit Products.

III. Plaintiff Purchased the Copper Fit ICE Products Infused With CoQ10.

55. In or about 2020, Plaintiff, while in New York, purchased two Copper Fit ICE knee sleeve products via Copper Fit's website and Copper Fit shipped the products to Plaintiff's home in New York.

56. Prior to purchasing the Copper Fit ICE products, Plaintiff was exposed to Defendant's on-line advertising regarding its claims that the CoQ10 infused in the fabric of the Coper Fit ICE Products is motion activated and released and then absorbed into the human body when using the product, and that the absorbed CoQ10 would provide health benefits, including increased energy. In addition, Plaintiff reviewed the product packaging, which stated that (i) the product provides "RELIEF + RECOVERY," (ii) contains "MICRO ENCAPSULATED MENTHOL & COQ10," the "CoQ10" "PROMOTES ENERGY RECOVERY" and (iv) the product is "Motion activated, the more you move the more you gain."

57. Plaintiff purchased the Copper Fit ICE products believing Defendant's statements that the CoQ10 infused in the fabric is released and then absorbed into the human body when moving while using the product, and that the absorbed CoQ10 would provide health benefits, including increased energy. The CoQ10 infused in the fabric is useless and the Plaintiff received no such benefits.

58. Had Plaintiff known that the CoQ10 infused in the fabric of the Copper Fit ICE products is not absorbed into the human body and, even if absorbed in some amount, provides no health benefits, he would not have purchased Defendant's products or, at the very least, would not have paid the price premium charged for the Copper Fit ICE products compared to a cheaper compression garment that is not infused with CoQ10.

CLASS DEFINITION AND ALLEGATIONS

59. Plaintiff brings this action on behalf of himself and all other similarly situated consumers in the State of New York pursuant to Rule 23 of the Federal Rules of Civil Procedure, and seeks certification of the following class (the “Class”):

All consumers who, within the applicable statute of limitations period, purchased in the State of New York (whether online or in-person) Copper Fit ICE Products – manufactured, marketed, distributed and/or sold by Defendant which Defendant warranted is infused with CoQ10 that is absorbed into the human body when the products are used, and that such CoQ10 provides health benefits, including improving energy (the “Class Products”). Excluded from the class are Defendant, its parents, subsidiaries, affiliates, officers and directors, judicial officers and their immediate family members and associated court staff assigned to this case, and those who purchased Class Products for resale.

60. Plaintiff expressly disclaims any intent to seek any recovery in this action for personal injuries that he or any Class member may have suffered.

61. **Numerosity.** This action is appropriately suited for a class action. The members of the Class are so numerous that joinder of all members of the Class is impracticable. Plaintiff is informed, believes, and thereon alleges, that the proposed Class contains thousands of purchasers of the Class Products who have been damaged by Copper Fit’s conduct as alleged herein. The precise number of Class members is unknown to Plaintiff.

62. **Existence and Predominance of Common Questions of Law and Fact.** This action involves questions of law and fact common to the Class. The common legal and factual questions include, but are not limited to, the following:

- Whether Defendant’s conduct, as alleged herein, constitutes violations of New York General Business Law Section 349.
- Whether Defendant’s conduct, as alleged herein, constitutes violations of New York General Business Law Section 350.

- Whether Defendant labeled, advertised, marketed, and/or sold each Class Product with claims that (a) CoQ10 infused into the fabric of the products is motion activated and then released and absorbed into the human body when using the product, and (b) the purportedly absorbed CoQ10 provides health benefits, including increased energy.
- Whether Defendant's labeling, advertising, marketing, and/or selling of each Class Product with claims that (a) CoQ10 infused into the fabric of the products is motion activated and then released and absorbed into the human body when using the product, and (b) the purportedly absorbed CoQ10 provides health benefits, including increased energy, was and/or is false, fraudulent, deceptive, and/or misleading.

63. **Typicality.** Plaintiff's claims are typical of the claims of the members of the Class, because, *inter alia*, all Class members have been injured through the uniform misconduct described above and were subject to Copper Fit's blatant misrepresentations of material information. Moreover, Plaintiff's claims are typical of the Class members' claims. Plaintiff is advancing the same claims and legal theories on behalf of himself and all members of the Class.

64. **Adequacy of Representation.** Plaintiff will fairly and adequately protect the interests of the members of the Class. Plaintiff purchased a Class Product, and he was harmed by Copper Fit's deceptive misrepresentations. Plaintiff has therefore suffered an injury in fact as a result of Copper Fit's conduct, as did all Class members who purchased Class Products.

65. **Superiority.** A class action is superior to other methods for the fair and efficient adjudication of this controversy. The damages or other financial detriment suffered by individual Class members is relatively small compared to the burden and expense that would be entailed by individual litigation of their claims against Copper Fit. It would be virtually impossible for a member of the Class, on an individual basis, to obtain effective redress for the wrongs done to him or her. Further, even if the Class members could afford such individualized litigation, the court system could not. Individualized litigation would create the danger of inconsistent or contradictory judgments arising from the same set of facts. Individualized litigation would also

increase the delay and expense to all parties and the court system from the issues raised by this action. By contrast, the class action device provides the benefits of adjudication of these issues in a single proceeding, economies of scale, and comprehensive supervision by a single court, and presents no management difficulties under the circumstances here.

66. Plaintiff seeks monetary damages, including statutory damages on behalf of the entire Class, and other equitable relief on grounds generally applicable to the entire Class, to enjoin and prevent Copper Fit from engaging in the acts described. Unless a Class is certified, Copper Fit will be allowed to profit from its deceptive practices, while Plaintiff and the members of the Class will have suffered damages. Unless a Class-wide injunction is issued, Copper Fit will continue to commit the violations alleged, and the members of the Class and the general public will continue to be deceived.

67. Copper Fit has acted and refused to act on grounds generally applicable to the Class, making final injunctive relief appropriate with respect to the Class as a whole.

As and for a First Cause of Action
(Violation of New York General Business Law Section 349)

68. Plaintiff realleges and incorporates by reference the allegations in paragraphs 1 through 67 as if fully set forth herein.

69. New York General Business Law § 349 prohibits “deceptive acts or practices in the conduct of any business, trade, or commerce or in the furnishing of any service in New York.

70. By labeling, advertising, marketing, distributing, and/or selling each Class Product to Plaintiff and the other Class members with false claims that (a) CoQ10 infused into the fabric of the products is motion activated and then released and absorbed into the human body when using the product, and (b) the purportedly absorbed CoQ10 provides health benefits, including increased energy. Copper Fit engaged in, and continues to engage in, deceptive acts

and practices because the CoQ10 in the Class Products is not released and absorbed into the human body when using the Class Products, and any CoQ10 purportedly absorbed provides no health benefits.

71. In taking these actions, Copper Fit failed to disclose material information about its products, which omissions were misleading in a material respect to consumers and resulted in the purchase of Copper Fit's products.

72. Copper Fit has deceptively labeled, advertised, marketed, promoted, distributed, and sold the Class Products to consumers.

73. Copper Fit's conduct was consumer oriented.

74. Copper Fit engaged in the deceptive acts and/or practices while conducting business, trade, and/or commerce and/or furnishing a service in New York.

75. Copper Fit's misrepresentations were misleading in a material respect as to whether the (a) CoQ10 infused into the fabric of the products is motion activated and then released and absorbed into the human body when using the product, and (b) the purportedly absorbed CoQ10 provides health benefits, including increased energy.

76. Copper Fit knew, or should have known, that by making the misrepresentations addressed herein, Plaintiff and other consumers would be misled into purchasing Class Products.

77. Plaintiff and the Class members have been aggrieved by and have suffered losses as a result of Copper Fit's violations of Section 349 of the New York General Business Law. By virtue of the foregoing unfair, unconscionable, and deceptive acts in the conduct of trade or commerce, Plaintiff and the members of the Class have been substantially injured by purchasing and/or overpaying for a product that is not what Copper Fit represents it to be.

78. By reason of the foregoing, Copper Fit's conduct, as alleged herein, constitutes deceptive acts and practices in violation of Section 349 of the New York General Business Law, and Copper Fit is liable to Plaintiff and the Class for the actual damages that they have suffered as a result of Copper Fit's actions, the amount of such damages to be determined at trial, plus statutory damages, treble damages, and attorneys' fees and costs.

79. Copper Fit's conduct, as alleged herein, in violation of Section 349 of the New York General Business Law was engaged in by Copper Fit willfully and/or knowingly. Accordingly, Plaintiff and members of the Class are entitled to an award of damages above and beyond their actual damages in accordance with Section 349(h) of the New York General Business Law.

80. Plaintiff further demands injunctive relief enjoining Copper Fit from continuing to engage in, use, or employ any act, including advertisements, packaging, or other representations, prohibited by Section 349 of the New York General Business Law.

As and for a Second Cause of Action
(Violation of New York General Business Law Section 350)

81. Plaintiff realleges and incorporates by reference the allegations in paragraphs 1 through 80 as if fully set forth herein.

82. Copper Fit's labeling, marketing, and advertising of the Class Products is "misleading in a material respect," as it fails to disclose to consumers material information in Copper Fit's sole possession and, thus, is "false advertising."

83. No rational individual would purchase the Class Products at the prices at which they are sold in full knowledge that the CoQ10 in the Class Products is not released and absorbed into the human body when using the Class Products, and any CoQ10 purportedly absorbed provides no health benefits.

84. Copper Fit's advertisements and marketing of the Class Products as being infused with CoQ10 and claiming that (a) the CoQ10 infused into the fabric of the products is motion activated and then released and absorbed into the human body when using the product, and (b) the purportedly absorbed CoQ10 provides health benefits, including increased energy, were consumer oriented.

85. Copper Fit's advertisements and marketing of the Class Products as being infused with CoQ10 and claiming that (a) the CoQ10 infused into the fabric of the products is motion activated and then released and absorbed into the human body when using the product, and (b) the purportedly absorbed CoQ10 provides health benefits, including increased energy, were misleading in a material respect.

86. By virtue of the foregoing unfair, unconscionable, and deceptive acts in the conduct of trade or commerce in New York, Plaintiff and the members of the Class have been substantially injured by paying for a product that has diminished, lesser or no value due to its false claims that (a) CoQ10 infused into the fabric of the products is motion activated and then released and absorbed into the human body when using the product, and (b) the purportedly absorbed CoQ10 provides health benefits, including increased energy.

87. Copper Fit's conduct, as alleged herein, constitutes false advertising in violation of Section 350 of the New York General Business Law, and Copper Fit is liable to Plaintiff and the members of the Class for the actual damages that they have suffered as a result of Copper Fit's actions, the amount of such damages to be determined at trial, statutory damages, plus treble damages, and attorneys' fees and costs.

88. Copper Fit continues to violate Section 350 of the New York General Business Law and continues to aggrieve Plaintiff and the members of the Class.

89. Plaintiff further demands injunctive relief enjoining Copper Fit from continuing to engage in, use, or employ any act, including advertisements, packaging, or other representations, prohibited by Section 350 of the New York General Business Law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment against Defendant as follows:

A. Certifying this action as a class action as soon as practicable, with the Class as defined above, designating Plaintiff as the named Class representative, and designating the undersigned as Class Counsel.

B. On Plaintiff's First Cause of Action, awarding against Defendant the damages that Plaintiff and the other members of the Class have suffered as a result of Defendant's actions, the amount of such damages to be determined at trial, plus statutory damages and treble damages.

C. On Plaintiff's Second Cause of Action, awarding against Defendant the damages that Plaintiff and the other members of the Class have suffered as a result of Defendant's actions, the amount of such damages to be determined at trial, plus statutory and treble damages.

D. On Plaintiff's First and Second Causes of Action, awarding Plaintiff and the Class interest, costs, and attorneys' fees.

E. Enjoining Defendant from continuing to engage in, use, or employ any act, including advertisements, packaging, or other representations, prohibited by Sections 349 and/or 350 of the New York General Business Law.

F. Awarding Plaintiff and the Class such other and further relief as this Court deems just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: May 5, 2022
White Plains, New York

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